MCI also raised an issue regarding E-911 at the hearing. According to MCI's counsel in his opening statement, VoIP providers like TWCIS have been ordered by the FCC to provide E-911 by the end of November, and TWCIS seeks to do that by interconnecting to the Public Safety Answering Point ("PSAP") through MCI.[21] Horry witness Douglas Meredith agreed that one of the ways a VoIP provider can satisfy an E-911 requirement is to connect through an incumbent LEC.[22] However, in this case, the incumbent LEC 911 service provider that is connected to the PSAP is the Regional Bell Operating Company and not Horry. In other words, connection to the PSAP is not relevant because *MCI has already conceded that it will not seek connection to the PSAP through Horry*, either directly or indirectly. The Ancillary Services Attachment to the proposed interconnection agreement contains clear and undisputed language on this point as follows:

> 1. 911/E-911 Arrangements
>
> 1.1 ILEC utilizes [RBOC] for the provision of 911/E911 services. The CLEC is responsible for connecting to [RBOC] and populating [RBOC]'s database. All relations between [RBOC] and CLEC are totally separate from this Agreement and ILEC makes no representations on behalf of [RBOC].

MCI's argument that E-911 and associated public interest issues are somehow implicated in this proceeding is simply not true. MCI has already agreed that it will seek connection to the PSAP through an incumbent LEC other than Horry.

For the reasons stated above, we find that the agreement between Horry and MCI is properly limited to include traffic of end user customers directly served by the

[21] *See* TR. at p. 6, ll. 6-12.
[22] TR. at p. 248, ll. 10-14.

respective parties. We, therefore, adopt the following language proposed by Horry:

> General Terms and Conditions; Glossary; § 2.17 – Definition of "End User":
>
> A retail business or residential end user subscriber to Telephone Exchange Service provided directly by either of the Parties.
>
> Interconnection Attachment, § 1.1:
>
> This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.
>
> Interconnection Attachment, § 3.1:
>
> Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, and shall only carry IntraLATA traffic originated or terminated directly between each Parties End User Customers. The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275.

ISSUE 9: Should the Parties be providing service directly to End Users to port numbers?

MCI's Position:

No. This is not required for any industry definition of LNP. MCI is certified to do LNP for the End Users that indirectly or directly are on its network. Concerns that some resellers may not be telecommunications carriers or must provide the same type telecommunications services provided prior to the port is an illegal limit on what entities MCI can provide wholesale telecommunications services. The FCC has even allowed IP-Enabled (VoIP) service providers to obtain numbers directly without state certification.

See the FCC's CC Docket 99-200 order released February 1, 2005, granting SBC Internet Services, Inc. a waiver of section 52.15(g)(2)(i) of the FCC's rules. And MCI knows no law requiring that the same type of Telecommunications Service provided prior to the port has to be provided. That is antithetical to the goals of competition.

Horry's Position:

Yes. The current FCC rules require only service provider portability. Horry's language proposed in the agreement is consistent with Horry's obligations and the FCC's rules regarding number portability.

Discussion:

This issue deals with Local Number Portability ("LNP") and whether MCI is permitted to obtain LNP when it does not intend to directly serve the end user customers to whom the numbers will be ported. Current Federal Communications Commission ("FCC") rules on LNP require only service provider portability.

The definition of service provider portability states:

> [S]ervice provider portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.[23]

Service provider portability is the only type of portability required.[24] There are no rules or standards today providing for or governing porting of numbers to non-telecommunications carriers.

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[23] 47 C.F.R. § 52.21(q).

[24] *See* Third Report and Order, *Telephone Number Portability*, 13 F.C.C.R, 11701 (1998), at ¶ 3 ("In light of the statutory definition, Section 251(b)(2) requires service portability, but not location or service portability.").

The definition of service provider portability is clear that the port must be between *two telecommunications carriers*.[25] This would also require end users to have *telecommunications service* before and after the port.[26] The definition does not provide for porting to a customer who switches to a non-telecommunications service. It also does not provide for porting between a telecommunications service provider and a non-telecommunications service provider. There are no rules requiring these types of ports. There are also no standards in the Alliance for Telecommunications Industry Solutions ("ATIS") standards body to address how these ports would actually take place, the billing associated with the resulting calls, and how traffic would be exchanged.

MCI expects that the arrangement it reaches with Horry will enable MCI to port numbers from Horry so that MCI can, in turn, provide those numbers *to TWCIS* for use by TWCIS' VoIP end user customers.[27] In this indirect relationship, there is no assurance that the end-user customer that requested the port will actually retain the number, since MCI has no relationship with the end-user customer. This does not meet the definition of service provider portability, and Horry is under no obligation to allow this type of porting. Therefore, Horry has proposed language that would allow MCI to properly port Horry's numbers to MCI's end user telecommunications service customers, but would not allow for other types of porting that Horry is not obligated to provide.

The MCI/TWCIS proposed porting arrangement does not meet the definition of service provider portability for several reasons. First, TWCIS has included a "regulatory disclaimer" in its state filing stating that TWCIS does not concede that its VoIP services

[25] *See* 47 C.F.R. § 52.21(q).
[26] *Id.*
[27] *See* e.g. TWCIS' Petition to Intervene in this Docket dated June 28, 2005.

constitute telecommunications services, local exchange services, common carrier offerings, or services that are otherwise subject to federal or state regulation.[28] Horry is not required to provide LNP to a non-telecommunications service provider, and Horry should not be required to provide indirectly (through MCI as an intermediary) what it would not be required to provide directly. Although MCI may be a telecommunications service provider for some purposes, in this situation no telecommunications service is being provided to the end user. The end user in this situation is a VoIP customer of TWCIS, not a telecommunications service customer of MCI. Thus, the two basic qualifications for service provider portability are not met. The end user does not have telecommunications service after the port and the service provider is not currently classified as a telecommunications service provider.

MCI suggests that the FCC has concluded that VoIP providers are entitled to LNP.[29] However, the order cited by MCI does not deal with LNP at all and is not an order of general applicability. [30] The FCC's order granted SBC Internet Services, Inc. ("SBCIS") a waiver under specific circumstances to allow that company to obtain telephone numbers directly from the numbering administrator to expand SBCIS's VoIP trial.[31] The Order does not address LNP, and, therefore does not take a position on porting numbers to VoIP providers, either directly or indirectly.

For the reasons stated above, we adopt the following language proposed by Horry because it comports with Horry's obligations with respect to LNP, but does not require

[28] *See* Testimony of Julie Y. Patterson in Commission Docket No. 2004-280-C at p. 6, ll. 4-8.
[29] *See* e.g. TR. at p. 85, ll. 6-8.
[30] *See* Order, *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 99-200, rel. Feb. 1, 2005 ("SBCIS Order").
[31] *Id.*

Horry to provide LNP in a manner that exceeds those obligations to the detriment of Horry, its customers, and the general public:

> LNP Attachment, § 1.1:
>
> The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider to the End User Customer porting the telephone number. The dial tone must be derived from a switching facility that denotes the switch is ready to receive dialed digits. In order for a port request to be valid, the End User Customer must retain their original number and be served directly by the same type of Telecommunications Service subscribed to prior to the port.

TOPIC 2: ISP-BOUND TRAFFIC AND VIRTUAL NXX (Issues 3, 4(b) and 5)

We will discuss Issues 3, 4(b) and 5 together.

ISSUE 3: Is ISP traffic in the Commission's or FCC's jurisdiction in terms of determining compensation when FX or virtual NXX service is subscribed to by the ISP?

MCI's Position:

See Issue No. 4(b). ISP traffic is in the FCC's jurisdiction and subject to compensation treatment pursuant to its ISP Remand Order as amended by the CoreCom decision. The Texas PUC recently clarified that its order applying access charges to CLEC FX traffic only applied to non-ISP traffic and that the FCC's ISP Remand order

applies to ISP traffic. While MCI believes that it is discriminatory to allow ILECs to rate their FX and virtual NXX traffic as local when CLECs are not allowed to do the same, it will not litigate this issue, as concerns Horry, for non-ISP traffic in light of the Commission's previous decisions. However, MCI reserves the right to have its FX and virtual NXX services rated as local if the FCC preempts the subset of states that have inconsistent rulings on the rating of CLEC FX or virtual NXX services.

Horry's Position:

The issue in dispute between Horry and MCI is not, as MCI suggests, whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC. The issue is what constitutes ISP-bound traffic, especially when the CLEC assigns a virtual NXX as a dial-up ISP number and the ISP is not physically located in Horry's local calling area. Under Horry's proposed language all types of interexchange calls, including dial-up ISP calls using a virtual NXX, are to be treated consistent with the Commission's and the FCC's existing rules which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

ISSUE 4(b): Should MCI have to provide service only to End Users physically located in the same LATA to be covered by this agreement?

MCI's Position:

No. As stated above, ISP traffic is under the FCC's jurisdiction, and it never said its ISP reciprocal compensation orders do not apply to Virtual NXX traffic. FX/ISP provider customers do not have to be physically located in the LATA to be subject to the ISP Remand Order. The FCC has established a compensation regime for ISP traffic that

does not require payment of access charges.

Horry's Position:

For purposes of this agreement, yes. The physical location of the originating and terminating customer determines the jurisdiction of the call.

ISSUE 5: Should all intraLATA traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance?

MCI's Position:

MCI believes reciprocal compensation rates should apply for ISP and non-ISP Local/EAS traffic if out of balance (60/40). MCI believes the recent CoreCom ruling allows it to seek reciprocal compensation for ISP traffic in new markets.

Horry's Position:

Compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party with no per minute of use billing related to the exchange of such IntraLATA Traffic. From the beginning of negotiations, Horry proposed that there be no per minute of use billing for the exchange of IntraLATA Traffic under the agreement because sub-traffic is believed to be roughly balanced. Because MCI is a CLEC and can change business plans at any time in order to serve a certain sub-set of end user customers, and it can use regulatory arbitrage to its financial advantage. Horry does not have this flexibility to choose certain customers, because it is a carrier of last resort and has an obligation to provide basic local exchange service to all end user customers within its certificated service area.

Discussion:

The main issue in dispute between Horry and MCI with respect to this topic is not whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC, as MCI suggests. The issue is whether the traffic destined for an ISP to which a Virtual NXX has been assigned (*i.e.*, the ISP is not physically located in Horry's local calling area but MCI has assigned a local number to the ISP) should be treated the same as local ISP traffic or non-local ISP traffic. Horry asserts that all types of interexchange calls, including dial-up ISP calls using a Virtual NXX, should be treated in a manner consistent with the Commission's and the FCC's existing rules, which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

The Commission's and the FCC's current intercarrier compensation rules for wireline calls clearly exclude interexchange calls from both reciprocal compensation and ISP intercarrier compensation. These calls are subject to access charges. This is also the case for virtual NXX calls, which are no different from standard dialed long distance toll or 1-800 calls. All of these types of calls are interexchange calls that do not fall within the reciprocal compensation rules. In other words, if a Horry customer calls someone in California, it is a long distance call, regardless of whether the Horry customer is calling a friend or calling AOL in California. That traffic is considered interexchange and is not the type of ISP-bound traffic that has been the subject of recent FCC orders in ISP reciprocal compensation.

The question that has been addressed by the FCC is how to treat ISP-bound traffic in a situation where the ISP is physically located within the same local calling area that is

served by a LEC.[32] The FCC found that such traffic is "information access" and, therefore, not within the scope of Section 251(b)(5); *i.e.*, it is not subject to the FCC's reciprocal compensation rules.[33]

It is clear from the FCC orders and rules that (1) traffic destined for customers (including ISPs) outside the local exchange area is interexchange traffic and is to be treated as such; and (2) traffic destined for ISPs inside the local exchange area is subject to compensation under the FCC's interim ISP-bound traffic compensation regime.[34] To confuse matters, some carriers have a practice of assigning local numbers to customers when the customer is not physically located in the local area. This practice is known as assigning a "Virtual NXX." A Virtual NXX is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned. The issue that has arisen in this arbitration is how such Virtual NXX traffic should be treated when it is destined for an ISP that is physically located outside the local exchange area but has been assigned a local number. Horry believes the answer is clear that Virtual NXX traffic should be treated the same regardless of whether it is destined for an ISP or some other type of business.

There is clear precedent in the Commission's prior orders with respect to the

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[32] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), at ¶ 13.

[33] *ISP Remand Order* at ¶ 44.

[34] *See ISP Remand Order*; *see also* Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the "ISP Remand Order"*, WC Docket No. 03-171 (rel. Oct. 18, 2004). While the D.C. Circuit Court of Appeals remanded the *ISP Remand Order* on the grounds that the FCC had failed to provide an adequate legal basis for the rules it had adopted, the Court did not vacate the order and observed that there may be other legal bases for adopting the rules. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). The FCC's interim rules remain in effect pending review on remand.

practice of assigning Virtual NXX's, both with respect to ISPs and to other customers.[35] This Commission has also ruled in two separate prior orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*,[36] the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*,[37] the Commission held that:

> This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated." *The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates.* In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call." (emphasis added)[38]

MCI argues that the *Adelphia* and *US LEC* Orders "should no longer be controlling, at least with regard to ISP-bound traffic."[39] We see no reason to deviate from our prior rulings. Virtual NXX for dial-up calls to ISPs is not "ISP-bound Traffic," as MCI argues, but is interexchange traffic that is subject to the appropriate access charges. As we have found in prior orders, the physical location of the calling and called

[35] *See* Order No. 2005-544, which ruled on the same issue presented here.
[36] *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Docket No. 200-516-C, Order on Arbitration (January 16, 2001) ("*Adelphia Arbitration Order*").
[37] *Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket No. 2002-181-C, Order No. 2002-619 (August 30, 2002) ("*US LEC Arbitration Order*").
[38] *Id.* at 22 (emphasis added).
[39] MCI Petition at p. 11.

parties determines the proper treatment of the call. In the above example, if the customer is calling AOL in California, it is a long distance call. The fact that a CLEC attempts to have those calls rated as local calls by assigning a local number to that customer (Virtual NXX) does not make them local calls, because the calls are still terminating in California.

Nothing in the FCC's rules or orders indicates anything to the contrary. The ISP intercarrier compensation regime established in the FCC's *ISP Remand Order*[40] does not apply to Virtual NXX or other interexchange calls delivered to ISPs, as MCI contends. The United States Court of Appeals for the District of Columbia Circuit, in reviewing the FCC's order, clearly recognized that the "interim [compensation] provisions devised by the [FCC]" apply only to "calls made to [ISPs] *located within the caller's local calling area*."[41] In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit Court's understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is correct. The question before the FCC with respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Thus, in the *ISP Declaratory Ruling*,[42] the FCC rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's local server" and "ends

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[40] Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").
[41] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Circuit 2002).
[42] Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*"), at ¶¶ 12-15.

at the ISP's local premises." And, in the ISP Remand Order, the FCC recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC."[43]

Issue 4(b) involves whether or not the jurisdiction of the call should be determined based on the physical locations of the originating and terminating customers. This is the long-established and settled rule for determining the proper treatment and rating of calls. Both the FCC and this Commission have determined that the call jurisdiction is based on the physical location of the end user customers. The FCC has determined that the end-user customers involved in a telecommunications transmission must be physically located within the "local area" in order for the FCC to conclude that such traffic is "local."[44]

As discussed above, we have previously ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order* and again in the *US LEC Arbitration Order*, we concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. Furthermore, in the *US LEC Arbitration Order*, we specifically recognized and discussed the application of this rule to Virtual NXX traffic destined for ISPs outside the local calling area.[45] Finally, we recently reaffirmed those orders in Order No. 2005-544 in Docket No. 2005-67-C in which we addressed the exact same issue raised here. We see no reason to modify or

[43] *ISP Remand Order* at ¶¶ 10, 13.
[44] *See* Order *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996) at ¶ 1043.
[45] *See US LEC Arbitration Order* at pp. 25-27.

deviate from our prior precedent.

Issue 5 relates to whether there should be reciprocal compensation paid for out-of-balance traffic. Horry has proposed that there should not be a per-minute compensation rate for the exchange of IntraLATA Traffic, but that compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party. This is because the traffic should be roughly balanced if the parties are treating the traffic in an appropriate manner, as described above. However, it is obvious from MCI's position with respect to ISP-bound Virtual NXX traffic that it intends to provide dial-up service to ISPs and believes that such dial-up traffic using Virtual NXX should be subject to reciprocal compensation. As stated above, such Virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation is the remaining IntraLATA Traffic which, in the absence of regulatory arbitrage, should be roughly balanced.

Moreover, MCI is a CLEC and can change its business plan at any time to serve a certain sub-set of end users to enhance its payments from interconnecting carriers. MCI can target a type of customer like an ISP, thereby potentially generating out-of-balance traffic. Horry does not have the flexibility to choose certain types of customers, as Horry must serve any end user customer within its respective service area who requests service.

For the reasons stated above, we adopt Horry's proposed language relating to ISP-Bound Traffic and Virtual NXX issues, as follows:

GT&C, Glossary §§ 2.25, 2.28. 2.34:

INTRALATA TRAFFIC Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.

ISP-BOUND TRAFFIC
ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.

LOCAL/EAS TRAFFIC
Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff.

Interconnection Attachment, § 1.1:

This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

Interconnection Attachment, § 2.4:

The Parties agree to only route intraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instructions and is not a provision of this Agreement. Both Parties agree that compensation for IntraLATA Traffic shall be in the form of the mutual exchange of services provided by the other Party with no additional billing related to exchange of such traffic issued by either Party except as otherwise provided in this Agreement.

TOPIC 3: RECIPROCAL COMPENSATION RATE (Issue 21)

ISSUE 10: What should the reciprocal compensation rate be for out-of-balance Local/EAS or ISP-bound traffic?

MCI's Position:

MCI has proposed the rate set forth in the FCC's ISP Remand Order.

Horry's Position:

As discussed in Issues 3 and 5, there is not a need for a reciprocal compensation rate. In fact, during the entire course of negotiations the Parties never discussed what would be the appropriate reciprocal compensation rate. All of the discussion surrounded if there should even be reciprocal compensation.

Discussion:

The issue of an appropriate reciprocal compensation rate is not ripe for arbitration because it was not brought up during the negotiations.[46] Negotiation is required before an issue can be submitted for arbitration.[47] This issue is, therefore, not properly before us at this time, and we decline to address it.

TOPIC 4: CALLING PARTY IDENTIFICATION (CPN AND JIP) (Issues 1, 6 and 8)

Issues 1, 6 and 8 will be discussed together.

ISSUE 1: Should companies be required to provide JIP (Jurisdictional Indicator

[46] *See* TR. at p. 203, ll. 1-8.
[47] *See* Section 252(a)(2) ("Any party negotiating an agreement under this section may, at any point in the negotiations, ask a State commission to participate in the negotiation and to mediate any differences *arising in the course of the negotiations*"); Section 252(b)(1) (any "*party to the negotiation*" may, during the specified time frame, petition a State commission to "arbitrate any *open* issues.") (emphasis added).

Parameter) information?

MCI's Position:

No. This is not a mandatory field. The National Information Industry Forum is still working on rules for carriers choosing to populate this field for VoIP traffic and wireless carriers. The revised instructions for landline carriers was only released in December. There is only a recognized industry standard to provide CPN currently.

Horry's Position:

Yes. Horry should have the ability to determine the proper jurisdiction of the calls delivered to their switches. Jurisdictional Indicator Parameter (JIP) is one of the pieces of information that is available and technically feasible which supports Horry's ability to establish the proper jurisdiction of calls terminating to its networks.

ISSUE 6: Should Parties be required to provide (a) CPN and JIP and (b) and pay access charges on all unidentified traffic?

MCI's Position:

MCI (a) is willing to provide CPN or JIP, but not both as the latter is an optional SS7 parameter. (No other ILEC has proposed that MCI must provide JIP) and (b) believes that all unidentified traffic should be priced at same ratio as identified traffic. A price penalty should not be applied for something MCI does not control. MCI is open to audits and studies by either Party if one or the other thinks the 10% or more of traffic missing CPN information is an effort to avoid access charges.

Horry's Position:

Yes. In order to properly identify the jurisdiction of the traffic exchanged between

the parties, the parties should be required to provide CPN and JIP. The parties should have an incentive to properly identify the jurisdiction of the traffic exchanged between them.

ISSUE 8: Should Parties have to provide the specified signaling parameters on all calls?

MCI's Position:

No. Percentages for CPN have been set above and JIP is not mandatory. MCI will agree not to alter parameters received from others, but it cannot commit to more than 90% CPN being provided.

Horry's Position:

Yes. All signaling parameters are to be included in the signaling information, whatever the source.

Discussion:

There are three inter-related issues regarding calling party identification. The first issue is whether the parties should be required to provide a "Jurisdictional Indicator Parameter" or JIP in their call signaling information. From Horry's standpoint, JIP is a critical piece of information that helps Horry determine the physical location of the calling party and, therefore, the jurisdiction of a call that is sent to Horry for termination.[48] Horry is willing and able to provide JIP on all calls sent to MCI and believe there is no reason MCI cannot do the same.[49]

The jurisdiction of the call is important because that is what determines the

[48] *See* TR. at p. 173, l.1 through p. 174, l. 3.
[49] TR at p. 206, ll. 11-21; TR. at p. 100, ll. 7-15; TR. at p. 181, ll. 9-16.

appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. Local calls, intrastate interLATA, and interstate calls are all treated differently for compensation purposes. Local calls are subject to reciprocal compensation, bill and keep, or an agreement to mutually perform termination services. Intrastate interLATA calls are subject to the appropriate South Carolina intrastate switched access rates, which are approximately $0.01 per minute of use.[50] Interstate calls are subject to the appropriate interstate switched access charges, which range from approximately $0.015 to $0.025 per minute of use.[51]

Some traffic that is intrastate or interstate toll is entering networks disguised as local traffic in order for carriers to avoid the payment of access charges.[52] Based on investigations by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified using several methods.

One method for misrepresenting the traffic is to substitute a local calling party number ("CPN") for the actual CPN of the call. Because carriers have the ability to substitute CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call.[53]

Toll calls are also incorrectly identified by CPN when telephone numbers are assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a Virtual NXX, telephone numbers are obtained in one rate

[50] TR at p. 170, ll. 4-5.
[51] Id.
[52] *See* TR at p. 170, ll. 6-9.
[53] TR at p. 172, ll. 3-10 and ll. 22-23; TR. at p. 173, ll. 3-6.

center and assigned to customers in another rate center or even another state. When a South Carolina telephone 843-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 843-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll.[54]

The JIP is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 843-666-2222 but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. Horry uses both the CPN and the JIP to determine the jurisdiction of the call, because Horry cannot accurately determine the jurisdiction of the call using only one of these parameters standing alone.

The JIP still helps identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At minimum, the JIP helps identify calls that are originated outside the regional switch. Therefore the call originated in San Francisco would be identified as a toll call.

The Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF")[55] has addressed JIP over the last several years. In December of

[54] TR at p. 172.

[55] ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for

2004, ATIS adopted seven rules for populating JIP. Although ATIS did not make JIP a mandatory field, it strongly recommended the use of JIP by companies to assist with identifying the true jurisdiction of calls. Two of the seven rules address the issue of inclusion of JIP:

Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.

Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The NIIF rules also address the situation noted by MCI where a switch serves a regional area:

Rule 4. Where technically feasible if the origination switch or mobile switching center ("MSC") serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.

If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

We note that Rule 3 states that NIIF does not recommend proposing that the JIP parameter be mandatory. Second, Rule 4 discusses the use of JIP "where it is technically feasible."

MCI states that its Class 5 switches, i.e. those used for local service, are in North Carolina or Georgia.[56] Such an arrangement is not unusual for CLECs, which use a

communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

[56] TR. at p. 42, ll. 3-4.

limited number of switches to cover multiple ILEC serving areas, crossing state and LATA boundaries. Under this arrangement, a call originating in Columbia and ending in Columbia would produce a JIP that would indicate the call is a toll call from North Carolina/Georgia. Obviously, the call should be rated and billed to the originating end user as a local call.

MCI states that it will pass JIP, but it will only be the JIP of the MCI switch, which will limit the use of JIP to accurately rate traffic.[57] MCI states that it will not and cannot pass a unique JIP for every LATA served by its switch as the RLECs request. Further, MCI notes that a unique JIP for every LATA is difficult to achieve.[58] According to MCI, this would create significant additional equipment, software and administrative cost and would create network inefficiency, reducing the economies of scale available to CLECs for switching.[59]

On the other hand, MCI has a DMS switch, and the DMS switch is capable of supporting multiple JIPs. At a minimum the JIP parameter is included with the LNP software if it was not already part of the switch. We find that there is a need for jurisdictional information in addition to the CPN in order to enable the Parties to properly identify the jurisdiction of the call. However, based on MCI's assertions, we also find that providing JIP information may not be technically feasible or economical. We, therefore, hold that the Parties should be required to provide both CPN and JIP where it is technologically and economically feasible, as defined by not being a barrier to entry.

Issue 6 relates to the question of traffic that lacks CPN or JIP (as proposed by

[57] TR. at p. 45, ll. 20-21.
[58] TR. at p. 48, l. 16 - p. 49, l. 4.
[59] Id.

MCI) or that lacks CPN and JIP (as proposed by Horry). MCI proposes that unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The MCI proposal is reasonable, and we adopt MCI's proposal. Concerns over fraud may be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which the parties have already agreed.

Issue 8 also relates to whether or not the parties should be required to provide JIP, but involves another issue as well. MCI has proposed language that will enable it to "pass along as received" signaling information it receives from other carriers. According to MCI, its proposed language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI states that it, no differently than other carriers, will have as much control over traffic to and from TWCIS as Horry itself has over traffic to and from its customers.

Again, we would state that the Companies should be required to provide JIP where it is technologically and economically feasible as defined by not being a barrier to entry.

We therefore adopt the following language on these issues:

GT&C, § 9.5:

> The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including the JIP and originating signaling information, the provision of the JIP being where it is technologically and economically feasible as defined by not being a barrier to entry. The Parties shall each use commercially reasonable

efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

Interconnection Attachment, § 2.7.7:

The Parties will prorate unidentified traffic by jurisdiction according to the identified traffic. The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure (where the provision of JIP was attempted) and to assist its correction.

Interconnection Attachment, § 3.6:

Signaling Parameters: ILEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling Party Number, JIP [where technologically and economically feasible as defined by not being a barrier to entry)] and destination called party number, etc.) pursuant to 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be provided including CPN, JIP (where technologically and economically feasible as defined by not being a barrier to entry), Calling party category, Charge Number, etc. All privacy indicators will be honored.

IV. CONCLUSION.

The Parties are directed to implement the Commission's resolution of the issues addressed in this Order by modifying the language of the Interconnection Agreement to the extent necessary to comply with the rulings and framework established herein. The Parties shall file an Agreement with the Commission within sixty (60) days after receipt of this Order. If the Parties are unable, after good faith efforts, to mutually agree upon language with respect to any of the issues addressed in this Order, at the end of the sixty (60) days, the respective Parties shall file proposed language representing the most recent proposal to the other Party on that issue, and the Commission shall adopt the language that best comports with the Commission's findings in this proceeding.

This Order is enforceable against MCI and Horry. Horry affiliates which are not

incumbent local exchange carriers are not bound by this Order. Similarly, MCI affiliates are not bound by this Order. This Commission cannot enforce contractual terms upon a Horry or MCI affiliate which is not bound by the Act.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice Chairman

(SEAL)